**UNITED STATES PATENT AND TRADEMARK OFFICE**
**Docket No. 14178US02**

In the Application of:

Frank, et al.

Serial No.: 10/658,140

Filed: September 9, 2003

For: Method and System for Providing an Intelligent Switch in a Hybrid Wired Wireless Local Area Network

Examiner: Van Kim T. Nguyen

Group Art Unit: 2661

Confirmation No.: 3008

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited, with sufficient postage, with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief -- Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Joseph M. Butscher
Reg. No. 48,326

Date: March 29, 2006

## APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Applicants respectfully request that the Board of Patent Appeals and Interferences reverse the final rejection of claims 1-2, 11-12, and 21-22 of the present application. The Applicants note that this Brief on Appeal is timely because it is being filed with a Petition for a Four Month Extension of Time. Thus, the period for reply ends on April 14, 2006.

## REAL PARTY IN INTEREST
## (37 C.F.R. § 41.37(c)(1)(i))

The real party in interest is Broadcom Corporation, assignee of the present application, having a place of business at 16215 Alton Parkway, P.O. Box 57013, Irvine, California 92619-7013.

## RELATED APPEALS AND INTERFERENCES
## (37 C.F.R. § 41.37(c)(1)(ii))

Not applicable.

## STATUS OF THE CLAIMS
## (37 C.F.R. § 41.37(c)(1)(iii))

The present application includes 32 claims.[1] Claims 3-10, 13-20, and 23-32 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.[2] Claims 1-2, 11-12, and 21-22 stand rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 6,847,620 ("Meier").[3] Applicants identify claims 1-2, 11-12, and 21-22 as the claims that are being appealed. The text of the pending claims is provided in the Claims Appendix.

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[1] *See* Present Application ("Application") at pages 39-45.
[2] *See* July 14, 2005 Office Action at page 3.
[3] *See id.* at pages 2-3.

## STATUS OF AMENDMENTS
## (37 C.F.R. § 41.37(c)(1)(iv))

Subsequent to the final rejection of claims 1-2, 11-12, and 21-22 mailed July 14, 2005, Applicants filed a Response, but did not amend any of claims.[4]

## SUMMARY OF CLAIMED SUBJECT MATTER
## (37 C.F.R. § 41.37(c)(1)(v))

Certain embodiments of the present invention provide a system and method for communicating in a hybrid wired/wireless local area network.[5] The method may include sending a first messaging protocol message between a first switch and a first access point.[6] The method may also include receiving at least a second messaging protocol message from the first access point and/or the first switch in response to the first messaging protocol message.[7] One or more of the first and second messaging protocol message and/or a third messaging protocol message may be used to control one or more of the first switch, a second switch, a first access point, a second access point, and one or more access devices.[8] The first messaging protocol message may be generated by the first switch.[9] The second messaging protocol message may be

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[4] *See* September 14, 2005 Response to Final Office Action.
[5] *See* present application at page 8, lines 3-4.
[6] *See id.* at page 8, lines 4-6.
[7] *See id.* at page 8, lines6-8.
[8] *See id.* at page 8, lines 8-11.
[9] *See id.* at page 8, line 12.

generated by the second switch in response to the generation of the first messaging protocol message.[10]

Certain embodiments of the present invention also provide a machine-readable storage, having stored thereon a computer program having at least one code section for providing communication for a switch in a hybrid wired/wireless local area network, the code section executable by a machine for causing the machine to perform the steps described above.[11]

Certain embodiments of the present invention also provide a system for communicating in a hybrid wired/wireless local area network.[12] The system may include a switch having a transmitter, which may be adapted to send a first messaging protocol message between a first switch and a first access point.[13] The switch may include a receiver that may be adapted to receive a second messaging protocol message from the first access point and/or the first switch.[14] The receiver may be adapted to receive a second message, which may be responsive to the transmittal of the first messaging protocol message.[15] A controller may be adapted to control one or more devices using the first messaging protocol message, second messaging protocol message and/or

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[10] *See id.* at page 8, lines 12-14.
[11] *See id.* at page 9, lines 1-5.
[12] *See id.* at page 9, lines 6-7.
[13] *See id.* at page 9, lines 7-9.
[14] *See id.* at page 9, lines 9-11.
[15] *See id.* at page 9, lines 11-12.

third messaging protocol message.[16] The devices controlled by the controller may include, but are not limited to, the first switch, a second switch, the first access point, the second access point, and one or more access devices.[17] The system may also include a generator adapted to generate the first messaging protocol message from the first switch and the receiver may be adapted to receive the second messaging protocol message from the second switch.[18]

## GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL (37 C.F.R. § 41.37(c)(1)(vi))

Claims 1-2, 11-12, and 21-22 stand rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 6,874,620 ("Meier").

## ARGUMENT (37 C.F.R. § 41.37(c)(1)(vii))

The Final Office Action rejects claims 1-2, 11-12, and 21-22 as being anticipated by Meier. Meier, however, does not describe, teach or suggest every recited limitation within these claims. Moreover, the Final Office Action fails to establish a *prima facie* case of anticipation because it does not specifically point to every limitation of the rejected claims of the present application in Meier.

The burden of establishing a *prima facie* case of anticipation resides with the Patent and Trademark Office.[19] "A claim in anticipated only if each and every element as

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[16] *See id.* at page 9, lines 12-15.
[17] *See id.* at page 9, lines 15-17.
[18] *See id.* at page 9, lines 18-20.
[19] *See* In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984)

set forth in the claim is found, either expressly or inherently described, in a single prior art reference."[20] Further, the "identical invention must be shown in as complete detail as is contained in... the claim."[21]

The Examiner rejects claims 1, 11, and 21 of the present application as follows:

> Regarding claims 1, 11, and 21, as shown in Figures 1-3, Meier discloses a method for providing communication in a hybrid wired/wireless local area network (100), comprising:
>
> sending a first messaging protocol message (VLAN tagged frames, VLAN ID) between at least one of:
>
> a first switch (A) and a first access point (A1-A3), and
>
> the first switch (A) and a second switch (B), (col. 3: line 5 – col. 5, line 15);
>
> responsive to the first messaging protocol message (VLAN tagged frames, VLAN ID), receiving at least a second messaging protocol message (tagged/untagged frames) from at least one of
>
> the first access point (A1), and
>
> the first switch (A), and
>
> the second switch (B), (col. 6, lines 14-22); and
>
> controlling the first switch (A), the second switch (B), the first access point (A1-A3), a second access point (B1-B3), and at least one of access devices (A4) using the first messaging protocol message (VLAN tagged frames, VLAN ID), the second messaging protocol message

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quoting In re Warner, 379 F.2d 1011, 1016, 154 USPQ 173, 177 (CCPA 1967).
[20] *Verdegaal Bros. v. Union Oil Co. of California,* 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).
[21] *Richaradson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

> (tagged/untagged frames) and a third messaging protocol message (join, leave, attach, detach, or alert request), (col. 5: line 25 – col. 14: line 2).[22]

The Final Office Action rejects claims 2, 12, and 22 by summarily concluding that "Meier also discloses generating the first messaging protocol message (VLAN untagged frames) by the first switch (col. 3: line 5-col. 5: line 15)."[23]

As shown above, the Final Office Action rejects the claims by merely labeling various limitations with vague reference characters from the figures of Meier, and by citing lengthy portions of the text of Meier. Further, the Final Office Action does not specifically point to each limitation of the claims in Meier. For example, the Final Office Action, as shown above, cites to ten columns in Meier to allege that Meier discloses "controlling the first switch, the second switch, the first access point, a second access point, and at least one access device using said first messaging protocol message, said second messaging protocol message protocol message and a third messaging protocol message."[24] The Final Office Action, however, does not indicate where in the cited ten column of Meier the limitations are found.

On August 30, 2005, the Applicants conducted an interview with the Examiner.[25] During this interview, the Applicants requested that the Examiner identify the particular portions of Meier in which the specific claim limitations of the rejected claims could be

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[22] *See* July 14, 2005 Office Action at pages 2-3.
[23] *See id.* at page 3.
[24] *See id.* at page 3.
[25] *See* 37 CFR 1.133 Statement of the Substance of the Examiner Interview.

found.[26] The Examiner responded that she was not sure where exactly in the twelve cited columns of Meier the limitations were specifically located.[27] Rather, the Examiner indicated that she thought the limitations could generally be found in all twelve columns of Meier.[28]

The Applicants respectfully submit, however, that Meier does not describe, teach, or suggest each and every limitation recited in the claims of the present application. For example, the Applicants respectfully submit that Meier does not describe, teach, or suggest "controlling said first switch, a said second switch, said first access point, a second access point, and at least one access devices using said first messaging protocol message, said second messaging protocol message and a third messaging protocol message," as recited in claims 1 and 11. Additionally, the Applicants respectfully submit that Meier does not describe, teach, or suggest "a controller adapted to control said first switch, a said second switch, said first access point, ~~said~~ a second access point, and at least one access devices using said first messaging protocol message, said second messaging protocol message and a third messaging protocol message," as recited in claim 21 of the present application. Thus, at least for these reasons, the Applicants respectfully submit that Meier does not anticipate any of the claims of the present application.

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[26] *See id.*
[27] *See id.*
[28] *See id.*

In rejecting the claims of the present application, the Examiner was supposed to identify the particular part Meier to support the rejections.[29]

> In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that clamed by the applicant, the **particular part relied on must be designated as nearly as practicable**.[30]

The Final Office Action, as shown above, however, does not identify particular portions of Meier in rejecting the claims of the present application. Instead, the Final Office Action generally cites large tracts of Meier to reject the claims. Further, when requested to identify particular portions of Meier relevant to the claim limitations, the Examiner was unable to do so.[31] Thus, the Applicants respectfully submit that the Examiner has not established a *prima facie* case of anticipation with respect to claims 1-2, 11-12, and 21-22.

## CONCLUSION

The Applicants respectfully submit that Meier does not describe, teach, or suggest, every limitation recited in the claims of the present application. For example, Meier does not describe, teach, or suggest at least "controlling said first switch, a said second switch, said first access point, a second access point, and at least one access

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[29] *See* Manual of Patent Examining Procedure (MPEP) at § 706.02(i), which states that "the particular part of the reference relied upon to support the rejection should be identified."
[30] *See* 37 C.F.R. § 1.104(c)(2).
[31] *See* 37 CFR 1.133 Statement of the Substance of the Examiner Interview.

devices using said first messaging protocol message, said second messaging protocol message and a third messaging protocol message." Additionally, the Examiner has not established a *prima facie* case of anticipation with respect to claims 1-2, 11-12, and 21-22, as noted above.

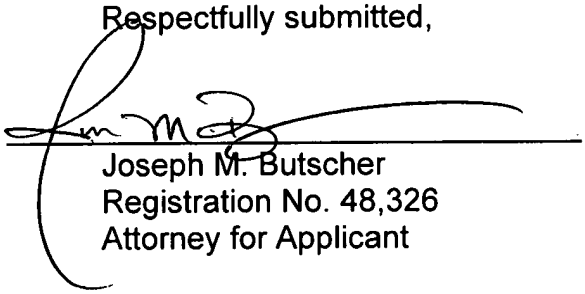
At least for the reasons discussed above, the Applicants respectfully submit that the pending claims are allowable in all respects. Therefore, the Board is respectfully requested to reverse the rejections of pending claims 1-2, 11-12, and 21-22.

**PAYMENT OF FEES**

The Commissioner is authorized to charge the fee for this appeal brief ($500) and any additional fees or credit overpayment to Deposit Account 13-0017.

Respectfully submitted,

Dated: March 29, 2006



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## CLAIMS APPENDIX
## (37 C.F.R. § 41.37(c)(1)(viii))

1. A method for providing communication in a hybrid wired/wireless local area network, the method comprising:

sending a first messaging protocol message between at least one of:

a first switch and a first access point, and

said first switch and a second switch;

responsive to said first messaging protocol message, receiving at least a second messaging protocol message from at least one of:

said first access point,

~~and~~ said first switch, and

said second switch; and

controlling said first switch, ~~a~~ said second switch, said first access point, a second access point, and at least one access devices using said first messaging protocol message, said second messaging protocol message and a third messaging protocol message.

2. The method according to claim 1, further comprising generating said first messaging protocol message by said first switch.

3. The method according to claim 2, wherein receiving said second messaging protocol message from said second switch is in response to said generating of said first messaging protocol message.

4. The method according to claim 1, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is an access point status message communicated between said first switch and one of:

said first access point,

said second access point,

and said second switch.

5. The method according to claim 1, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least one access point configuration message communicated from at least one of:

said first switch, and

said second switch,

to at least one of:

said first access point, and

said second access point.

6. The method according to claim 1, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least one switch status message communicated between said first switch and said second switch.

7. The method according to claim 1, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least one switch configuration message communicated between said first switch and said second switch.

8. The method according to claim 1, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least one client status message communicated from at least one of:

said first access point, and

said second access point,

to at least one of:

said first switch, and

said second switch.

9. The method according to claim 1, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least a device discovery message communicated between said first switch and said second switch, between said first switch and at least one of:

said first access point, and

said second access point,

and between said first access point and at least one of:

said second access point, and

said at least one access devices.

10. The method according to claim 9, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least one switch status message communicated between said first switch and said second switch.

11. A machine-readable storage, having stored thereon a computer program having at least one code section for providing an intelligent switch in a hybrid wired/wireless local area network, the at least one code section executable by a machine for causing the machine to perform the steps comprising:

sending a first messaging protocol message between at least one of:

a first switch and a first access point, and

said first switch and a second switch;

responsive to said first messaging protocol message, receiving at least a second messaging protocol message from at least one of:

said first access point,

~~and~~ said first switch, and

said second switch; and

controlling said first switch, ~~a~~ said second switch, said first access point, a second access point, and at least one access ~~devices~~ using said first messaging protocol message, said second messaging protocol message and a third messaging protocol message.

12. The machine-readable storage according to claim 11, further comprising code for generating said first messaging protocol message by said first switch.

13. The machine-readable storage according to claim 12, wherein code for receiving said second messaging protocol message from said second switch is in response to said generating of said first messaging protocol message.

14. The machine-readable storage according to claim 11, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol ~~messages~~,

is an access point status message communicated between said first switch and one of:

said first access point,

said second access point,

and said second switch.

15. The machine-readable storage according to claim 11, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least one access point configuration message communicated from at least one of:

said first switch, and

said second switch,

to at least one of:

said first access point, and

said second access point.

16. The machine-readable storage according to claim 11, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least one switch status message communicated between said first switch and said second switch.

17. The machine-readable storage according to claim 11, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least one switch configuration message communicated between said first switch and said second switch.

18. The machine-readable storage according to claim 11, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least one client status message communicated from at least one of:

said first access point, and

said second access point,

to at least one of:

said first switch, and

said second switch.

19. The machine-readable storage according to claim 11, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least a device discovery message communicated between said first switch and said second switch, between said first switch and at least one of:

said first access point, and

said second access point,

and between said first access point and at least one of:

said second access point, and

said at least one access devices.

20. The machine-readable storage according to claim 19, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least one switch status message communicated between said first switch and said second switch.

21. A system for providing communication in a hybrid wired/wireless local area network, the system comprising:

a transmitter adapted to send a first messaging protocol message between at least one of:

a first switch and a first access point, and

said first switch and a second switch;

a receiver adapted to receive a second messaging protocol message from at least one of:

said first access point,

~~and~~ said first switch, and

said second switch,

in response to said first messaging protocol message; and

a controller adapted to control said first switch, ~~a~~ said second switch, said first access point, ~~said~~ a second access point, and at least one access device~~s~~ using said first messaging protocol message, said second messaging protocol message and a third messaging protocol message.

22. The system according to claim 21, further comprising at least one generator adapted to generate said first messaging protocol message by said first switch.

23. The system according to claim 22, wherein said receiver is adapted to receive said second messaging protocol message from a second switch in response to said generating of said first messaging protocol message.

24. The system according to claim 23, further comprising at least one processor adapted to control said transmitter, said receiver, said controller and said at least one generator.

25. The system according to claim 21, wherein said controller comprises:

a QoS controller coupled to ~~said~~ an at least one processor;

a load balancing controller coupled to said at least one processor;

a session controller coupled to said at least one processor; and

a network management controller coupled to said at least one processor.

26. The system according to claim 21, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is an access point status message communicated between said first switch and one of:

said first access point,

said second access point, and

said second switch.

27. The system according to claim 21, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least one access point configuration message communicated from at least one of:

said first switch, and

said second switch,

to at least one of:

said first access point, and

said second access point.

28. The system according to claim 21, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least one switch status message communicated between said first switch and said second switch.

29. The system according to claim 21, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least one switch configuration message communicated between said first switch and said second switch.

30. The system according to claim 21, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least one client status message communicated from at least one of:

said first access point, and

said second access point,

to at least one of:

said first switch, and

said second switch.

31. The system according to claim 21, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least a device discovery message communicated between said first switch and said second switch, between said first switch and at least one of:

said first access point, and

said second access point,

and between said first access point and at least one of:

said second access point, and

said at least one access devices.

32. The system according to claim 31, wherein at least one of:

said first messaging protocol message, and

said third messaging protocol messages,

is at least one switch status message communicated between said first switch and said second switch.

## EVIDENCE APPENDIX
## (37 C.F.R. § 41.37(c)(1)(ix))

(1) United States Patent No. 6,847,620 ("Meier"), entered into record by Examiner in July 14, 2005 Office Action.

## RELATED PROCEEDINGS APPENDIX
## (37 C.F.R. § 41.37(c)(1)(x))

Not applicable.